



transferred all of his interest in certain real estate to Trust. Date 1 is after September 25, 1985 but before October 23, 1986.

Attorney prepared and timely filed Husband's and Wife's respective Form 709, United States Gift Tax Return, reporting the transfers to Trust. On the Forms 709, Husband and Wife signified their consent to treat the transfer made one-half by each spouse, pursuant to § 2513. The applicability of the generation-skipping transfer (GST) tax to Trust and the failure to allocate GST exemption to the Date 1 transfer made to Trust was discovered in Year. It has been represented that Husband and Wife have allocated \$x of their respective GST exemptions to date. Husband and Wife each represent they have sufficient GST exemption available to allocate to the Date 1 transfer to Trust.

Husband and Wife request an extension of time to make an election under § 2642(g) and §§ 301.9100-1 and 301.9100-3, to allocate GST exemption to their transfers to Trust, effective as of the date of the transfers to Trust.

#### LAW AND ANALYSIS

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Section 2513(a)(1) only applies if both spouses have signified their consent to the application of this section in the case of all such gifts made during the calendar year by either while married to the other.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 26.2601-1(a)(1) of the Generation-Skipping Transfer Tax Regulations provides that, except as otherwise provided in this section, the provisions of chapter 13 apply to any GST (as defined in § 2611) made after October 22, 1986.

Section 26.2601-1(a)(2) provides that, solely for purposes of chapter 13, an inter vivos transfer is treated as if it were made on October 23, 1986, if it was (i) subject to chapter 12 (regardless of whether a tax was actually incurred or paid); and (ii) made after September 25, 1985, but before October 23, 1986. For purposes of this paragraph, the value of the property transferred shall be the value of the property on the date the property was transferred.

Section 2602 provides that the amount of the tax imposed by § 2601 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a), the inclusion ratio with respect to any property transferred in a GST is the excess (if any) of one over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust, and the denominator of which is the value of the property transferred to the trust.

Section 2631(a), in effect at the time of the transfer, provided that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as defined in § 2632(c)(3)(B).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of the GST tax.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-1 through 301.9100-3.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Section 301.9100-3(a) provides, in part, that requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

In this case, Trust was established and the transfers to Trust were made before the enactment of the GST tax on October 22, 1986. Pursuant to §§ 26.2601-1(a)(1) and (2), however, the transfers to Trust are deemed to have been made after the enactment of the GST tax.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Husband and Wife are granted an extension of time of 120 days from the date of this letter to allocate their respective available GST exemption to the transfers made to Trust on Date 1. The allocations will be based on the value of the property transferred to Trust on Date 1 and effective as of the date of Date 1.

The allocations should be made on supplemental Forms 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center — Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: Lorraine E. Gardner  
Lorraine E. Gardner  
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Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of the letter  
Copy for § 6110 purposes